(1)
Supreme Court, U.S.
FILED
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No.

In the Supreme Court of the United States

Marilyn I. Ellman

Petitioner,

vs.

Woodstock School District #200

Respondent,

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit
Chicago, Illinois

PETITION FOR A WRIT OF CERTIORARI

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41 pp

QUESTIONS PRESENTED

1. Whether the Northern District Court of the 7th Circuit of Illinois, Western Division, erred in not providing the Pro Se litigant Ellman with the new Pro Se local rule 56.2, adopted for Pro Se litigants only?

2. Whether the U.S. Seventh Circuit Appeal Court, also, erred by charging Ellman, Pro Se, with filing a frivolous law suit, and granting respondent's legal fees; even though they knew that she was denied the benefit of the new local rule 56.2 adopted for Pro Se litigants?

3 .Whether Local Rule 54.3 is constitutionally unfair as the rule enlarges the time to file for attorney's fees, beyond the time set by Congress in FRCP 54(d)(2)(B) and therefore constitutes a usurpation of congressional power?

4. Whether it was a reversible error for the Northern District Court of the 7th Circuit of Illinois, Western Division Judge Phillip Reinhard, to strike affidavits and statements of facts from a Pro Se litigant, who has demonstrated a valid cause of action for Age and Sex Discrimination, and thereafter to grant Summary Judgment to the opposing Respondent party over a technical non-compliance of an exceptionally harsh local rule, 56.1, without Judicial Notice, a warning, and an opportunity to correct the non-compliance with the advantage of the new Pro Se local rule 56.2, of which Ellman was not informed of?

5. Whether Local rules 56.1 and 54.3 for the Northern District Court of the 7th Circuit of Illinois, are unconstitutional because they introduce basic Procedural innovations, and as they impair fundamental Civil Liberties guaranteed by Amendments 5, and 7, and 14, of the U.S. Constitution; in that the local rules exceed the congressional grant in the corresponding FRCP, because they allow forfeiture without proper Judicial Notice, and enlarge the time and scope of the requirements of FRCP 56 and 54 (d) (2) (B)?

6. Whether pro Se Litigants should receive consideration by the court in presenting their case, and whether when it is shown that the Pro Se litigant has a valid cause of action they should be held to a lesser standard than attorneys in order to present their case to a fact finder as the Supreme Court mandates, as laid down, in *Haines v. Kerner*, 404 U.S. 519 (1972), and Swierkiwicz v. Sorena, 534 U.S. 506 (2002)?

7. Whether FRCP 83 prohibits the District Courts from making or enforcing "any" Local Rule that is not consistent with the FRCP?

8. Whether The District Court Grant of Summary Judgment was an abuse of discretion, or a clear Error of Law as a violation of Federal Rule of Civil Procedure 83?

9. Whether the District Courts are abusing the Mandate of the Supreme Court, holding in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); and *Matsushita Electric Industrial Co. vs. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), by using the Summary Judgment procedure to clear their calendars and denying parties with valid claims an opportunity to present their case to a fact finder?

10. Whether the Supreme court should revisit . *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); and *Matsushita Electric Industrial Co. vs. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), so as to clearly set guidelines for the proper use and application of the Summary Judgment procedure by the District courts?

LIST OF PARTIES TO PROCEEDING

Petitioner consists of Marilyn I Ellman, resident of Wisconsin, Pro Se, a School Psychologist with the Respondent, Woodstock School District #200, Woodstock, Illinois.

Respondent consists of Woodstock School District #200, Woodstock, Illinois.

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OPINONS BELOW

Petitioner seeks review of the opinions/Orders below filed by the United States Court of Appeals for the Seventh Circuit and the decisions from the United States District court for the Northern District of Illinois:

[1] The Opinion of the U.S. Court of Appeals for the Seventh Circuit, upholding the district court was entered on March 5, 2003.

The Judgment and opinion of the United States Court of Appeals, appears at Appendix **A** to the petition and is unpublished pursuant to seventh circuit local rule 53.

[2] The Order denying Appellant's petition for rehearing en banc and motion to vacate the order granting sanctions was entered on May 13, 2003.

The order of the United States Court of Appeals Appears at Appendix **B** to the petition and is unpublished pursuant to seventh circuit local rule 53.

[3] The Judgment & Memorandum Opinon of the United States District Court Northern District of Illinois, Western Division granting Summary Judgment for the defendant was entered, February 26, 2001.

The Judgment of the United States District Court Northern District of Illinois, Western Division

Appears at Appendix **C** to the petition and is unpublished.

[4] The Order for payment of costs (fees) by Plaintiff, from the United States District Court Northern District of Illinois, Western Division was entered August 22, 2001.

The Order for the United States District Court appears At Appendix **D** to the petition and is unpublished.

[5] The Order for payment of fees (costs) by Plaintiff, from the United States District Court, Northern District of Illinois, Western Division was entered October 1, 2001.

The Order for the United States District Court appears at Appendix **E** to the petition and is unpublished.

This Petition follows:

Jurisdiction

A -- District Court

Jurisdiction of the United States District Court, Northern District of Illinois, Western Division was based on diversity of citizenship. Plaintiff is a resident of the State of Wisconsin and defendants are residents of the State of Illinois. The amount in controversy exceeds $75,000. Jurisdiction is also claimed under 28 U.S.C. 1331, 1332, 1343, 1367 and 42 U.S.C. 1983, civil rights and Title VII. Venue is proper as the complained of actions occurred in the district and division, see 29 U.S.C. 1391.

B -- Appellate Jurisdiction

The jurisdiction of the appellate court was claimed under U.S.C. 1291 and/or U. S. C. 2107.

The dates of the lower court decisions, The United States Court of Appeals for the Seventh Circuit, are:

1. The Opinion of the U.S. Court of Appeals for the Seventh Circuit was entered on May 5, 2003 upholding the district court and granting sanctions.

2. The Order of the U.S. Court of Appeals for the Seventh Circuit denying petition for rehearing en banc and motion to vacate the order granting sanctions was entered on May 13, 2003.

C.--JURISDICTION OF SUPREME COURT

The Supreme Court enjoys jurisdiction to review final judgments of the United States circuit Courts by virtue of 28 U.S.C. 1254 (1):

28 U.S.C. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

The petition for Certiorari should be filed within 90 days of the appellate court's date of the denial of the timely petition of rehearing en banc opinion. The 90 days should

commence to run from – May 13, 2003. The petition is therefore due on or before August 11, 2003, and is timely filed by that date.

Service has been made on the respondents, as required by Supreme Court Rule 29.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

Local Rule 54.3.

Local Rules, United States District Court
Northern District Of Illinois

LR 54.3 Attorney's Fees and Related Non-taxable Expenses
(a) Definitions; General. [omitted]
(b) Time to File. Either before or after the entry of judgment the court may enter an order with respect to the filing of a fee motion pursuant to Fed.R.Civ.P. 54. Unless the court's order includes a different schedule for such filing, the motion shall be filed in accordance with the provisions of this rule and shall be filed and served **no later than 90 days** after the entry of the judgment or settlement agreement on which the motion is founded. If the court has not entered such an order before a motion has been filed pursuant to Fed.R.Civ.P. 54(d)(2)(B), then after such filing the court may order the parties to comply with the procedure set out in this rule as a post-filing rather than as a pre-filing procedure.

[End of relevant section]

Rule 54 FEDERAL RULES OF CIVIL PROCEDURE

(54 (d)(2)(B)
(d) Costs; Attorneys' Fees.
(2) *Attorneys' Fees.*
(A) [Omitted not relevant]
(B) Unless otherwise provided by statute or order of the court, **the motion must be filed and served no later than 14 days after entry of judgment**; must specify the judgment
and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.
(C) [omitted not relevant]
(D) By local rule the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof and may refer a motion for attorneys' fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.
(E) [omitted not relevant]

LR56.1. Motions for Summary Judgment

(a) Moving Party. With each motion for summary judgment filed pursuant to Fed.R.Civ.P. 56 the moving party shall serve and file—

(1) any affidavits and other materials referred to in Fed.R.Civ.P. 56(e);

(2) a supporting memorandum of law; and

(3) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law, and that also includes:

(A) a description of the parties, and

(B) all facts supporting venue and jurisdiction in this Court.

The statement referred to in (3) shall consist of short numbered paragraphs, including within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

If additional material facts are submitted by the opposing party pursuant to section (b), the moving party may submit a concise reply in the form prescribed in that section for a response. All material facts set forth in the statement filed pursuant to section (b)(3)(B) will be deemed admitted unless controverted by the statement of the moving party.

(b) Opposing Party. Each party opposing a motion filed pursuant to Fed.R.Civ.P. 56 shall serve and file—

(1) any opposing affidavits and other materials referred to in Fed.R.Civ.P. 56(e);

(2) a supporting memorandum of law; and

(3) a concise response to the movant's statement that shall contain:

(A) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon, and

(B) a statement, consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. All material facts set forth in the statement required

of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.

NEW LR 56.2 – Notice to Pro Se Litigants Opposing Summary Judgment

Any party moving for summary judgment against a party proceeding pro se shall serve and file as a separate document, together with the papers in support of the motion, a "Notice to Pro Se Litigant Opposing Motion for Summary Judgment" in the form indicated below. Where the pro se party is not the plaintiff, the movant should amend the form notice as necessary to reflect that fact.

NOTICE TO PRO SE LITIGANT OPPOSING MOTION FOR SUMMARY JUDGMENT

The defendant has moved for summary judgment against you. This means that the defendant is telling the judge that there is no disagreement about the important facts of the case. The defendant is also claiming that there is no need for a trial of your case and is asking the judge to decide that the defendant should win the case based on its written argument about what the law is.

In order to defeat the defendant's request, you need to do one of two things: you need to show that there is a dispute about important facts and a trial is needed to decide what the actual facts are or you need to explain why the defendant is wrong about what the law is.

Your response must comply with Rule 56(e) of the Federal Rules of Civil Procedure and Local Rule 56.1 of this court. These rules are available at any law library. Your Rule 56.1 statement needs to have numbered paragraphs responding to each paragraph in the defendant's statement of facts. If you disagree with any fact offered by the

defendant, you need to explain how and why you disagree with the defendant. You also need to explain how the documents or declarations that you are submitting support your version of the facts. If you think that some of the facts offered by the defendant are immaterial or irrelevant, you need to explain why you believe that those facts should not be considered.

In your response, you must also describe and include copies of documents which show why you disagree with the defendant about the facts of the case. You may rely upon your own declaration or the declarations of other witnesses. A declaration is a signed statement by a witness. The declaration must end with the following phrase: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct," and must be dated. If you do not provide the Court with evidence that shows that there is a dispute about the facts, the judge will be required to assume that the defendant's factual contentions are true, and, if the defendant is also correct about the law, your case will be dismissed.

If you choose to do so, you may offer the Court a list of facts that you believe are in dispute and require a trial to decide. Your list of disputed facts should be supported by your
documents or declarations. It is important that you comply fully with these rules and respond to each fact offered by the
defendant, and explain how your documents or declarations support your position. If you do not do so, the judge will be forced to assume that you do not dispute the facts which you have not responded to.

Finally, you should explain why you think the defendant is wrong about what the law is.

Federal Rules of Civil Procedure 56
Summary Judgment

(a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.
(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.
(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
(d) CASE NOT FULLY ADJUDICATED ON MOTION. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and

what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) AFFIDAVITS MADE IN BAD FAITH. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

FRCP 83 Rules by District Courts; Judge's Directives

(a) LOCAL RULES.
(1) Each district court, acting by a majority of its district judges, may, after giving appropriate public notice and an opportunity for comment, make and amend rules governing its practice. **A local rule shall be consistent with**—but not duplicative of—**Acts of Congress and rules adopted under 28 U.S.C. §§ 2072 and 2075,** and shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.
(2) **A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.**

(b) PROCEDURES WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law,

rules adopted under 28 U.S.C. §§ 2072 and 2075, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

28 U.S.C. 2072 Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) **Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.**

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

28 U.S.C. 2074 Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be

feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

U.S. CONSTITUTION
AMENDMENT V
[RIGHTS OF PERSONS]

Prosecution by presentment, indictment; double jeopardy; self-incrimination; due process; property taken for public use. No person shall be held...; **nor shall any person be** ... **deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII
[Right to Trial by jury in civil cases.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, **and no fact tried by a jury**, shall be otherwise re-examined in any Court of the United States

AMENDMENT XIV
(1868)

Section l. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State Wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

INTRODUCTION:

This is an age and sex discrimination case brought by a Pro Se litigant whose case was dismissed by the District Judge because Plaintiff incorrectly interpreted the requirements of writing her Summary Judgment, Statement of Material Facts and sworn affidavits in accordance with local rule 56.1. Her misunderstanding of this harsh local rule was used by the district judge to dismiss her case, and charge her with a frivolous law-suit. Unbeknownst to the Plaintiff, the district court, recognizing the difficulty in interpreting local rule 56.1, adopted a new rule for Pro Se litigants only, to help them prepare affidavits and Summary Judgments. Contrary to the direction of the District Magistrate, the Defendant's attorney, Stanley Eisenhammer of HODGES, LOZZI, EISENHAMMER, RODICK & KOHN, and who has over twenty five years of legal experience, knowingly chose to deceive Ellman by providing, not the new rule, but the old 56.1 local rule to Ellman the Pro Se litigant. Consequently the plaintiff was forced to prepare her documents without the benefit of the new and beneficial local rule 56.2. The United States Court of Appeals for the Seventh Circuit Court disallowed Appellant's defenses which were based on constitutional and local rules issues. Even when the Appellant submitted materials informing the U.S. Court of Appeals of her new awareness of the new local rule 56.2 on June 26, 2002; the Court allowed and granted Appellee's motion to strike these materials. Also another local rule, 54.3 enlarges the time to submit fees which appears contradictory to the corresponding FRCP. The U.S. Appeal Court for the

Seventh Circuit upheld the District Court and sanctioned Pro Se Appellant with legal fees, claiming the lawsuit was frivolous.

DISTRICT COURT CASE:

On or about September, 1988, Ellman was hired as a School Psychologist by the Woodstock School District 200, Mc Henry County, Woodstock, Illinois. Previous to that Ellman worked full-time in the Woodstock Schools as a SEDOM employee. Ellman became a member of the Woodstock Council of Teachers, McHenry County Federation of Teachers, ITF/AFT, AFL-CIO, Local 1640 in September 1988. Ellman was 51 years old at the time, in 1988, having been born on June 10, 1937. For several years

she had no problems with the School District, that is until she reached age 57. From that time on, the District was after her to retire, feeling that she was too old and desiring younger women. Finally following years of abuse, Ellman filed a complaint with the EEOC and the IDHR for the first time.

In 1998, that case went to court and Ellman lost through a summary judgment, as her counsel himself could not follow the requirement of Local Rule 56.1; one of the rules here at issue.

On April 10, 1998, and after the conclusion of the first case and upon a continued effort by the School District to force Ellman to retire, Ellman was again forced to file Charges of age and sex Discrimination and retaliation against The Woodstock #200 School District. The complaint was filed with the Equal Employment

Opportunity Commission, ("EEOC") and cross filed with the Illinois Department of Human Rights ("IDHR"). Ellman's charge of Discrimination was filed timely after the alleged unlawful employment practice occurred. Thus, Ellman had satisfied all administrative requirements. Ellman received a right to sue letter from the U.S. Department of Justice, Civil Rights Division dated October 28, 1998.

On January 12, 1999, after the School District intensified its efforts to coerce Ellman to take retirement, Ellman filed additional Charges of age, sex Discrimination and retaliation against The School District with the Equal Employment Opportunity Commission ("EEOC"). Ellman's Charge of Discrimination was filed timely after the alleged unlawful employment practice occurred. Thus, Ellman had satisfied all administrative requirements. Ellman received her second letter of right to sue dated February 22, 1999, from the Equal Employment Opportunity Commission.

The Background:

Ellman is a member of the class of persons protected by Illinois Law, more particularly 775 ILCS (The Illinois Human Rights Act), the state's Counterpart of Title VII, She was qualified for the job she was performing, and she was performing the job according to The School District's legitimate expectations.

Notwithstanding her qualifications and satisfactory job performance, she was subjected to different terms and conditions of employment then other younger and similarly-situated employees, who were treated more favorably than her, in the following.

On or about August 25, 1997, The School District assigned Ellman to a substandard classroom at (Yellow Hall room 226) at Woodstock High School, which was to be used as her office. There were other office spaces available.

On or about August 25, 1998, the School District assigned Ellman to a former custodian room (C249) which she was to use for her office. Plaintiff was in this office for two years (1998-1999 and 1999-2000). Ellman was informed by one of the high school custodians that asbestos wrapping insulation had been removed from the pipes during the summer of 1999.

The School District required Ellman to work beyond the normal school day without compensation for overtime, while other selected teachers were paid overtime for their work, beyond the normal school day.

The School District has continually harassed and threatened Ellman with unwarranted discipline. The School District continued to apply " Special Criteria for Successful Performance 1994-1995", only to Ellman, on a daily basis.. No other teacher had this criteria applied to them. This was deemed by the union to be an inappropriate document and was to be discontinued, however its use was still continuing at the time of the lawsuit, on a daily basis.

On or about January 7, 1999, and for a second time on Feb. 18, 2000, the School District failed to notify Ellman that school had been canceled due to severe weather, however all other teachers had been notified both times. The District failed to notify Ellman, only.

Ellman had evidence that was presented and ignored by the 'district judge', that the School District's harassment of her was with the ultimate goal of coercing her to retire. Male employees the same age and older than she, were not subject to the same standards and requirements as Ellman.

RETALIATION BY THE SCHOOL DISTRICT BECAUSE OF ELLMAN'S COMPLAINTS TO THE EEOC AND IDHR

Ellman had filed continuous and continuing charges of discrimination against the School District for age and sex discrimination, and for retaliation for her initial complaint.

Ellman was harassed by the School District because of her opposition to their unlawful activity. These second series of adverse employment actions occurred after and because of Ellman's complaints to the EEOC and the IDHR and amounted to retaliation.

Ellman should have been protected by The Illinois Human Rights Act. Through a Civil rights action in the Federal Court, she however never had a chance to bring her case before the finder of facts.

Ellman had been subjected to a long line of abuses by the School District, all calculated to force her to retire from a tenured position because:

a) Of her age. Plaintiff is 66 years of age, and
b) Plaintiff is a female. She was in a male-dominated district, while Dr. Joseph Hentges was the Superintendent. Ellman is the oldest female teacher/psychologist in the district.

<u>This Criteria was established and enforced for Ellman solely</u>

CRITERIA FOR SUCCESSFUL PERFORMANCE
1994-1995
MARILYN ELLMAN
SCHOOL PSYCHOLOGIST
WESTWOOD SCHOOL

1] Continue to complete case study evaluations in a timely and thorough manner.

2] Continue to work effectively with parents.

3] Primary responsibilities will be testing and special programs consultation. Counseling will be done only if time permits.

4] MDC/RAT responsibilities

a) Schedule initial and final RAT's on Arena Assessment children.

b) Schedule all initial RAT's within one week of receiving the referral and provide notice to the team members.

c) Schedule final RAT's, provide Notice to the team Members and make sure Maree is invited.

d) Responsible for bringing the Appropriate forms to the RAT's.

e) You are one of the team.

Your opinion is valuable. You are part of the decision. If you disagree with the team decision you can submit a letter of disagreement and it will be attached to the MDC form. To be part of the decision, you need to remain for the decision-making component of the process.

1. <u>Staffing Attendance</u>
   a) attend all staffings held in this building
2. <u>Professional Day</u>
   a) Staffings will be held after school.

Your professional day will conclude when the staffing concludes. Regular non-attendance will be an issue of concern.

3. Professional Relationships

a) Works cooperatively with arena assessment team members

b)Demonstrates respect for other building members and their opinions.

c)Demonstrates respect for supervisors.

4. Evaluation and Supervision

You will continue to have three supervisors/evaluators. Like any related service personnel, it is inherent that you will have multiple supervisors. Maree will be present for all staffings and will consult on the formatives and the summative. Dr. Rike and Dr. Ravitz will each conduct one formative each semester with a summative scheduled at the end of April. This is done so that any areas of concern that might arise can be addressed promptly.

[This special criteria should have been terminated in 1995 but was continued in ongoing daily requirements, only for Ellman]

++

Remediation Plan

The Special Criteria (only for Ellman) was used by the Superintendent Joseph Hentges to place Ellman on a Harsh and Unjust Remediation Plan. This was done to Ellman, even though she was the only Nationally Certified School Psychologist in the school district. The Remediation Plan was faulty as it was non-specific and contrary to the Union Agreement.

Forced work without Pay

Ellman was forced to work many hours of overtime without pay. This was accomplished by forcing her to attend meetings, held both before and after the normal school day. This was often a 7:30 a.m. to 5:30 p.m. or more work day which was against the union agreement. weekend work was also required without pay. Even though the Union had an agreement from management that this abuse would stop, it did not stop. Ellman wants to be paid for the many hours of forced work

Blackballing Ellman

Ellman applied for a job with the Clark County School District in Nevada, and after a successful meeting, the Nevada school district spoke with Woodstock and thereafter refused to hire Ellman.

Placed in Substandard Rooms with Poor Air Quality

Ellman was placed in yellow/hall room 226 at Woodstock High School. from August 1997 to June 1998. Halliwell Engineering Associates Inc. on May 19, 1998, reported poor quality air in room 226. Yellow Hall Room 226 was Ellman's office space. The School District was aware of the poor air quality when Ellman was assigned to this office space, and was also transferred two times in three years to separate schools, contrary to the Union agreement.

Ellman was assigned to a custodian's storage room at Verda Dierzen Early Learning Center from in June of 1998 and to other spaces that had poor air quality. Environmental Science and Engineering, in July 16, 1999, documented poor air quality in these rooms. As a result of

being placed in poor air-quality spaces, Ellman has had severe health problems, which has severely affected her joints and vision. Approximately $15,000 worth of physical therapy and doctor's bills has been paid. Ellman continues to have a fear of dying of cancer because of her forced exposure to spaces with asbestos.

The District Has a History of Age and Sex Discrimination

1) Inez Peterson was terminated without cause because she was a woman and also 62 years of age.

2) John Vrett was refused employment because he was over the age of the school's preferred employment. He was discriminated against because of his age and because he had a disability.

3) Frank Bill left the school district because he was unable to achieve compliance with Illinois school code, due to interference from the superintendent.

4) Bev Alfeld left over discrimination.

5) Apollonia M. Reckamp filed a lawsuit over allegations of discrimination, fraud, and harassment, because of age.

6) Faith Gonzales was so harassed by a hostile environment that she committed suicide following a Saturday morning of forced work without pay. She left the high school, walked two blocks, and threw herself in front of an ongoing commuter train.

Ellman was told by a school board member that Superintendent Joe Hentges stated at a school board meeting that Ellman, too, would commit suicide. The continuing harassment was not stopped by the school board. HODGES, LOZZI, EISENHAMMER, RODICK & KOHN, attorneys, were the architects of school district 200

discrimination atrocities. The school board did not stop them.

The above illegal methods of abusive tormenting by Superintendent Joseph Hentges and the school district for sex and age cleansing, were designed, planned and conceived by the school district's attorneys under the direction of attorney Stanley Eisenhammer, Nancy Fredman Krent, Bennet Rodick and other associates, of the law firm of HODGES, LOZZI, EISENHAMMER, RODICK & KOHN. The attorneys became active participations of this illegal Age & Sex Cleansing. An example of the attorney's intimate involvement in these illegal activities is illustrated by the illegal Remediation Plan they designed for Ellman. This illegal plan contains the law firm's name of HODGES, LOZZI, EISENHAMMER, RODICK & KOHN on each page. HODGES, LOZZI, EISENHAMMER, RODICK & KOHN designed this remediation plan for Ellman to be punitive, not remedial.

Procedural Background:

Appellant's original complaint was filed within the prescribed time limits of her EEOC Charge I. On May 19, 1999, Ellman filed a motion to amend her complaint to include facts set forth in Charge II. Her motion was denied without prejudice on May 26, 1999, because appellant had not attached a copy of the second Notice of Right to Sue. On May 28, 1999 the court received appellant's second motion to amend her complaint, which the court granted on June 11, 1999.

At the same time the court granted the motion of Appellants Counsel, Rene Hernandez, to withdraw from the case. Appellant has continued the case Pro Se, as she was

unable to afford another attorney. Hernandez withdrew after Plaintiff had paid Hernandez over $5,000 in fees obtained through a loan.

On June 22, 1999, Ellman filed a Motion for Change of Venue, believing that she could not receive a fair and impartial trial from the District Judge, Judge Philip G. Reinhard, who had in the prior case ruled in favor of the Defense by their Summary Proceedings. (See Appendix F) This motion was denied. (See Appendix G)

Appellant filed her Third Amended Complaint on February 4, 2000 against Woodstock School District for: Age and Sex Discrimination. This was based on age and sex discrimination, Retaliation, Breach of the Implied Covenant of Good Faith and Fair Dealing, Breach of Contract and Forced Involuntary Servitude. The Court denied two counts; Appellant filed her Dispositive Motion with an affidavit on July 31, 2000. A supplementary affidavit was accepted in court November 15, 2000. A second Supplementary affidavit and Plaintiff's Statement of Material Facts was submitted on November 15, 2000. A latter third supplementary affidavit was submitted with her Motion replying to Defendant's Memorandum of Law on Plaintiff's Material Facts. Judge Reinhard rescinded her affidavits because they did not comply with local rule 56.1.

Appellee filed their Dispositive Motions on November 1, 2000, January 9, 2001 and January 22, 2001. The court granted summary judgment to The School District, "disregarding Ellman's affidavits" and deeming her failure to follow L.R. 56.1 an admission of the Appellee's facts. Thus summary judgment was granted to The School District on February 26, 2001. In its order granting summary judgment, the court held the following:

1. That Ellman failed to follow L. R. 56.1 by not responding to the defendant's motion on a numbered paragraph basis; Memorandum Opinion and Order, Appendix C. There was no consideration by the court's failure to provide Pro Se Ellman with the new Pro Se LR 56.2 information which would have helped her to properly number the paragraphs and properly submit the Affidavits.

2. That Ellman, a pro se litigant, should be held to the same standards as an attorney; Opinion and Order, Appendix C. The court Further stated erroneous facts to support its memorandum. For instance:

a. That Ellman has not received a salary Decrease; Opinion and Order, appendix C. [Ellman had in fact received a salary decrease by her requirement to attend before and after school meetings without additional pay.]

b. That Ellman is required to attend meetings

before and after school, without pay contrary to the Union Agreement; Opinion and Order. [Ellman was required after her special criteria, and in violation of the Union Contract.]

3. That the court is not required to scour the record to unearth material factual disputes; Opinion and Order, Appendix C, [however the court is mandated to do justice between the parties].

4. That Ellman is collaterally estopped from pursuing claims of discrimination "when she has litigated a cause of action for discrimination" even though the discrimination is of a continuing nature, and occurs after a prior litigation: Opinion and Order, Appendix C;
[Ellman also lost the prior litigation by summary judgment as her then counsel also could not follow the requirement of LR 56.1.] This LR has prevented her from having her day in court.

On July 31, 2000 Ellman filed her motion for Summary judgment. The motion was accompanied by an affidavit setting forth her evidence and attachments were made thereto.

The School District requested permission to file a late motion for summary judgment, that motion was granted. Ellman was granted permission to supplement and/or amend her motion for partial summary judgment. Ellman responded thereto, also submitting affidavits and her statement.

Ellman's motion and affidavits did not specifically refer to the page and line in the affidavits or evidence, but referred to the affidavits or evidence offered therein more generally. The District Court struck the affidavits as not complying with local rule 56.1 and thereafter granted summary judgment to the defense in accord with LR 56.1 which allowed the judge to deem the statements of the defense as true.. The Defendants were further awarded Attorney's fees.

THE APPEAL TO THE SEVENTH CIRCUIT

An appeal followed to the Seventh Circuit where the District court Judgment was affirmed. Ellman argued that the Local Rules 54.3 and 56.1 were basic procedural innovations and therefore constitutionally unfair as they 1] provided for a forfeiture and 2] substantially enlarged the time for performance from the FRCP 54(d)(2)(B). By accident Ellman discovered the existence of new LR 56.2 for Pro Se litigants on June 26, 2002; that the court did not provide her. Ellman give the court Judicial Notice of her finding of the LR 56.2 that attorney EISENHAMMER did not provide her. He was directed to give Plaintiff LR 56 information on November 1, 2000. Attorney Eisenhammer,

knowingly provided the incorrect LR 56.1 instead of the correct LR 56.2, as he was directed to do by Magistrate P. Michael Mahoney.

Ellman further argues consistent with her appeal that the Federal District Court Judges are abusing the summary Judgment Procedure in form and substance. Therefore many cases are summarily dealt with, that should proceed to trial, and therefore deny the parties who have valid complaints and the evidence to proceed to trial, and obtain their day in court. Local rules and "technicalities of form" are the tools utilized by the federal District Courts which create forfeitures, where they should not be warranted. Litigants, primarily Pro Se Plaintiffs, are not receiving Justice in the Federal Court System. Procedures need to be put in place by the Supreme Court to insure that any case that has merit has an opportunity to proceed to a fact finder.

REASONS FOR GRANTING THE WRIT

The United States Supreme Court should grant the Writ, in order to correct the abuses of local rules which are inconsistent with the FRCP, and to provide clear and unambiguous guidelines for the District Court Judges in regards to the local rules and when summary judgment is and is not proper.

This Appellant suggests that the use of the Summary Judgment procedure is being abused by the Federal Courts to such an extent that Pro Se litigants with real issues and supportive "EVIDENCE" seldom have their day in court.

The Supreme Court should Grant the Writ in order to review the Local Rules of the Seventh Circuit as brought

to issue by this Writ, and to take a second look at how summary Judgment is being abused by the Federal Judges to limit Pro Se litigants' access to a fair trial and justice.

There are several issues that need to be resolved by the Supreme Court in order that Pro Se litigants will be able to receive justice through the Federal system. These reasons affect millions of people who are not paupers, yet cannot afford an attorney. Access to justice needs to be available to this large group of people of which Ellman is one.

1] Local Rule 56.1 for the U. S. District Court Northern District of Illinois; This rule is a basic procedural innovation, in that it provides for forfeiture beyond the perimeters of the Federal Rule 56. The rule is being applied in such a manner that very few cases can meet its harsh requirements, and hundreds of cases fail the test. And even though they can meet the proof of evidence to bring a case to trial, they are foreclosed from litigating their claims by virtue of LR 56.1. In any other jurisdiction many of these cases would withstand the Summary Judgment Motion.

2] New Local Rule 56.2 of the U.S. District Court Northern District of Illinois, was adopted to help Pro Se litigants to overcome the difficulties of LR 56.1. However, Ellman, unfortunately was denied the knowledge of the existence of this new rule by Respondent's attorney Eisenhammer, who was ordered by Magistrate Mahoney to provide Ellman with LR 56 information. Attorney Stanley Eisenhammer, knowingly chose not to inform Ellman of new Pro Se LR56.2. Consequently Judge Reinhard chose the opportunity to use Ellman's faulty interpretation of LR 56.1 to declare her case frivolous.

3] Local Rule 54.3 for the U.S Northern District Court of Illinois; This rule is also a basic procedural innovation, in that it enlarges the time for performance under Federal Rule 54. Federal Rule 54 allows an attorney 14 days from and after judgment to file his motion for fees. LR 54.3 allows an attorney 90 days from and after judgment to file his motion for fees.

If the Courts are to be the ultimate arbitrator, and seeker of the truth, their solitary purpose and reason for existence is to give and do justice between the opposing parties. They however have reached a place where procedure overshadows the evidence of the case. The search for justice is inhibited by ridged inflexible rules. These rules are calculated to, instead of searching for the truth, to prevent the truth from being exposed.

In the instant case, this Pro Se Petitioner, has the quantum of evidence to take her claim to the trier of fact, but she was precluded from doing so by virtue of local rule 56.1. She was not provided, at the time, notice of the new Pro Se LR 56.2, and the LR 56.1 rule was used to create forfeiture by disregarding Ellman's evidence and granting judgment to the Defendant without ever resolving the Discrimination charges at issue. Also the Seventh Circuit chose to punish Pro Se Ellman, and sanctured her by ordering her to pay costs and legal fees to the Appellee.

For the general good of the country and especially the majority of citizens of the United States who are not paupers, but of modest means, and need to act legally Pro Se, the Supreme Court needs to protect their access to justice. This will form a more Perfect Union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

These are mandates of our heritage and Constitution As a Daughter of the American Revolution; this is what Ellman's ancestors fought for and what she is fighting for now to the best of her ability, as a Pro Se Litigant.

CONCLUSION

The court should therefore grant this Writ of Certiorari in order to address these public concerns and to resolve these important issues of law involving the Constitution and Access to Justice by Pro Se Litigants.

Respectfully submitted,

Marilyn I. Ellman, Pro Se Petitioner

Dated: July 18, 2003

(2) Supreme Court, U.S.
FILED

03 No. 19 JUL 18 2003

In the
Supreme Court of the United States

Marilyn I. Ellman

Petitioner,

vs.

Woodstock School District #200

Respondent,

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit
Chicago, Illinois

APPENDIX FOR WRIT OF CERTIORARI

Marilyn I. Ellman, Pro Se
P.O. Box 408
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50 pp

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Appendix A

United States Court of Appeals;
For the Seventh Circuit
Chicago, Illinois 60604

JMGMENT- WITHOUT ORAL ARGUMENT

Date: March 5, 2003

BEFORE:
Honorable RICHARD A. POSNER, Circuit Judge

Honorable DANIEL A. MANION, Circuit Judge

Honorable ANN CLAIRE WILLIAMS, Circuit Judge

Nos. 01-1779 & 01-3777

MARILYN I. ELLMAN, Plaintiff - Appellant

v.

WOODSTOCK #200 SCHOOL DISTRICT,
Defendant - Appellee

Appeals from the United States District Court for the Northern District of Illinois, Western Division No. 99 C 50017, Philip G. Reinhard, Judge

The judgment of the District Court is AFFIRMED, with costs. Woodstock's motion to strike the new

arguments and the documents, which Ellman provides in her reply brief for the second appeal (01-3777), that are not part of the record is GRANTED. We order Ellman to show cause within 14 days why we should not impose sanctions against her filing these frivolous appeals. Within that time, Woodstock should subM4 t a statement of its costs and fees for these appeals. The above is in accordance with the decision of this court entered on this date.

(1060-110393)

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 18, 2003*
Decided March 5, 2003

Before

Hon. RICHARD A. POSNER, Circuit *Judge*

Hon- DANIEL A. MANION, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS., Circuit *Judge*

Appendix A; continuing

Nos. 01-1779 & 01-3777

MARILYN 1. ELLMAN,
Plaintiff-Appellant,
v.

WOODSTOCK #200 SCHOOL DISTRICT,

Defendant-Appellee

Marilyn Ellman, a school psychologist, sued her employer, Woodstock #200 School District, raising a variety of claims under Title VII and Illinois law. The essence of these claims was Ellman's belief that Woodstock was discriminating against her because of her age and gender- The district court granted summary judgment for Woodstock, and the court subsequently granted in part Woodstock's request for costs and attorneys' fees- Ellman appeals the district court's grant of summary judgment (this is No. 01-1779) and award of costs and fees (this is 01-1777), and in both appeals we affirm.

---

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fd. R - App. P- 34(a)(2).

Appendix A; Continuing

Nos- 01-1779 & 01-3777

In February 2000 Ellman filed her third amended complaint in this case. She alleged that Woodstock assigned her to a storage area without windows for an office and to a substandard classroom; required her to work overtime without pay; threatened her with unwarranted discipline and negative performance evaluations; and twice did not inform her when school was canceled due to inclement weather. She raised a number of claims under Illinois law and Title VII, and both parties moved for summary judgment.

In ruling on the summary-judgment motions, the district court noted that Ellman 's filings suffered from a number of deficiencies. With respect to Woodstock's motion, Ellman failed to respond to Woodstock's statement of facts, much less respond to each numbered paragraph with citations to the record, as was her obligation under Local Rule 56. 1. This was the case even after Woodstock informed her by letter of her failure to comply with Rule 56.1 and she moved for and was given an extension by the court to correct this deficiency. With respect to her own motion for summary judgment, Ellman 's statement of material facts failed to include required citations to the record and was replete with legal arguments and legal conclusions. The affidavit she filed with her motion likewise contained numerous statements that were speculative or not based on personal knowledge. In addition, months after filing her motion and affidavit, she

filed without the court's permission a "Supplementary Affidavit" and "Second Supplementary Affidavit," each containing numerous attachments. Based on these deficiencies, the district court accepted Woodstock's unresponded-to statement of facts as true and struck those portions of Ellman 's statement of facts and affidavit that contained legal arguments, conclusions, speculation, or did not have support in the record. The court also struck her untimely supplemental filings as "a complete derogation of the rules."

Turning to the merits, the court denied Ellman 's motion based on a "complete lack of evidence-" The court granted Woodstock's motion, concluding that Ellman (1) was collaterally estopped (issue preclusion) from bringing claims based on overtime pay and previous performance evaluations because she already had litigated unsuccessfully the issues underlying those claims, *see Ellman v- Hentges,* 165 F.3d 31 (7th Cir- 1998) (unpublished order); (2) was barred from bringing her **claim under** the **Illinois Human** Rights Act for failure to exhaust administrative remedies; and (3) failed to make out a prima facie discrimination case because she had not shown that she suffered an adverse employment action.

After Ellman appealed this decision, Woodstock moved for costs and attorneys' fees, *see* Fed- R. Civ. P_ 54, which the district court granted in part-awarding costs and fees only for issues that Ellman had litigated previously and therefore should have known were frivolous ($254.70 in costs and $925 in fees)

On appeal Ellman challenges an array of procedural rulings, including the district court's decision to strike portions of her statement of facts' and affidavit, to

accept Woodstock's statement of facts after Ellman failed to respond to it, and not to accept her untimely filings. She maintains that these rulings were improperly based on "technical non-compliance," which should have been overlooked because she is a pro se litigant.

While we do construe pro se filings liberally, even pro se litigants must follow procedural rules and district courts have discretion to enforce those rules. *Metro. Life Ins. Co. v. Johnson,* 297 F-3d 558, 562 (7th Cir. 2002); Greer v. Bd. of Educ. of Chicago, 267 F.3d 723, 727 (7th Cir. 2001). The requirements for pro se litigants in responding to summary-judgment motions are "not onerous," Waldridge v. Am. *Hoechst* Corp., 24 F.3d 918, 920 (7th Cir. 1994), and we disagree that Ellman 's deficiencies were mere technicalities. Employment- discrimination cases are "extremely fact-intensive"-the district court was not required to make up for Ellman 's failure to respond to Woodstock's statement of facts by hunting through her mass of filings to search for disputed factual issues. *See* Greer, 267 F.3d at 727. Moreover, the district court's decision to strike only the portions of her filings that were conclusory, speculative, or not based on personal knowledge did not prejudice Ellman because those portions would not have helped her motion for summary judgment anyway. *See* Fed. R. Civ. P. 56(e). Ellman does not explain how her case differs from the many in which we "have consistently and repeatedly upheld a district

court's discretion to require strict compliance with its local rules governing summary judgment." Bordelon v. Chicago Sch*Reform Bd. of Trs.*, 233 F.3d 524, 527 (7th Cir. 2000). Nor do we see any difference. The district court did not abuse its discretion in how it dealt with Ellman's procedural deficiencies.

Ellman also challenges the award of costs and attorneys' fees on the ground that Woodstock's motion was untimely. She points out that Federal Rule 54(d)(2)(B) states that a motion for costs "must be served or filed no later than 14 days after entry of judgment" and Woodstock filed its motion on May 25, 2001 (88 days after the district court's judgment)- The 14-day requirement of Rule 54(d)(2)(B), however, is preceded by a proviso-namely, that the timing and other listed requirements do not apply if "otherwise provided by statute or order of the court." Local Rule 54-3 extends the timing requirement to 90 days. We have already determined that local rules are orders of the court for purposes of Federal Rule 54(d)(2)(b), and thus valid modifications of the 14-day requirement. *Johnson v. Lafayette Fire Fighters Assoc-Local* 472, 51 F.3d 726, 730 (7th Cir. 1995). Because Woodstock's motion was filed within 90 days, it was timely.

The district court's judgment and award of costs and fees are AFFIRMED. Woodstock's motion to strike the new arguments and the documents, which Ellman provides in her reply brief for the second appeal (01-3777), that are not part of the record is GRANTED. We order Ellman to show cause within 14 days why we should not impose sanctions against her for filing these frivolous appeals- Within that time, Woodstock should submit a statement of its costs and fees for these appeals.

Appendix B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 13, 2003

Before:

Hon. Richard A. Posner, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

Hon. Ann Claire Williams, *Circuit Judge*

Nos. 01-1779 & 01-3777
Marilyn 1. Ellman,

Plaintiff-Appellant,

v.

Woodstock #200 School District,

Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Western Division.
Plaintiff-Appellant,

No. 99 C 50017 **Philip G. Reinhard,** Judge

Appendix B; Continuing

ORDER

On March 28, 2003 appellant filed a motion to vacate the order granting sanctions, issued by this court on March 5, 2003. That motion is hereby DENIED.

On consideration of the petition for rehearing en banc filed by plaintiff-appellant on April 10, 2003, no judge in active service has requested a vote on the petition for rehearing *en bane,* and all of the judges on the original panel have voted to deny rehearing. The petition is therefore DENIED.

Appendix C:

United States District Court, Northern District of Illinois

Name of Assigned Judge: Philip G. Reinhard

CASE NUMBER 99 C 50017

DATE: 2/26/2001

ELLMAN vs. WOODSTOCK #200 SCHOOL DISTRICT

DOCKETENTRY:

(10) For the reasons stated in the attached Memorandum Opinion and Order, the school district's motion to strike is granted in part and denied in Part. Ellman's Rule 56 motion for summary judgment is denied. The school district's Rule 56 motion for summary judgment is granted. This cause is hereby dismissed in its entirety.

"s/ Philip G. Reinhard".

Appendix C; Continuing

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

MARILYN I. ELLMAN,

Plaintiff,

v.

WOODSTOCK #200 SCHOOL DISTRICT,

Defendant.

No. 99 C 50017

MEMORANDUM OPINION AND ORDER

I. Introduction

Plaintiff Marilyn Ellman ("Ellman") has filed a six-count :third-amended complaint against her employer, Woodstock #200 School District ("the school district"). Count I is a state law claim of age discrimination based on the Illinois Human Rights Act ("IHRA"), 775 ILCS 5/1-101 et seq., Count II is a claim of sex discrimination based on Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq., and the IHRA, Count III is a retaliation claim based on Title VII and the IHRA, and Count V is a state law breach of contract claim.[1]

Currently pending before the court are the parties' cross-motions for summary judgment, filed pursuant to Fed.R.Civ.P. 56 [2]

---

1. Per Order dated June 12, 2000, this court dismissed Count IV (a state law claim for breach of the implied covenant of good faith and fair dealing) and Count VI (an "involuntary servitude" claim based on the Thirteenth Amendment), pursuant to the school district's Fed.R.Civ.P. 12(b)(6) motion.

2. The school district has called its motion a motion for summary judgment or in the alternative a motion to dismiss for failure to state a claim. Because materials were submitted in support of the motion, the court will consider the motion in its entirety as a motion for summary judgment filed pursuant to Rule 56.

and the school district's motion to strike. The court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367, 42 U.S.C. 20OOe-5(f)(3), and venue is proper as the complained of actions occurred in this district and division, see 29 U.S.C. § 1391.

II. Preliminary Matters

At the outset, the court notes that Ellman has failed to file a statement responding to each numbered paragraph in the school district's LR56.1(a) (formerly LR12M) statement of facts, supporting any disagreement with specific references to the record. LR56.1(b)(3)(A); Bordelon v. Chicago Sch. Reform Bd. of Trustees, 233 F.3d 524, 527 (7t' Cir..2000). Thus, all material facts set forth in the school district's statement are deemed admitted. Bordelon, 233 F.3d at 527.

Ellman argues she is acting pro se and should be extended latitude in complying with the procedural rules. The court rejects this argument for several reasons. First, the school district *in writing* specifically informed Ellman of her obligations under LR56.1. (Def. Mem. Supp. Summ. J.) Second, Ellman is no stranger to litigation. See, e.g., Ellman v. Lisle Bd. of Educ., No. 88 C 2247, 1989 WL 157328 (N.D. Ill. Dec. 14, 1989) (Conlon, J.); Ellman v. Hentges., No. 96 C 50217, aff'd, 165

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F.3d 31 (7" Cir. 1998) (unpublished) ; Ellman v. Hentges., No. 99 C 50269 (N.D. Ill.) (Reinhard, J.) (filed August 20, 1999); Ellman v. Harezlak, No. 00 C 50340 (N.D. Ill.) (Reinhard, J.) (filed September 27, 2000). Third, Ellman's pro se status does not relieve her of the burdens of a court's procedural requirements. See Members v. Paige, 140 F.3d 699, 702 (7 th Cir. 1998).

The school district also moves to strike Ellman's statement of material facts because it does not comply with the organizational requirements of LR56.1(a)(3), contains legal arguments and legal conclusions, and does not include specific references to the record. The school district also contends her affidavit attached to her motion for summary judgment fails to comply with Fed.R.Civ.P. 56(e), in that the affidavit contains hearsay, conjecture, speculation and statements about which Ellman has no personal knowledge. The court agrees with the school district in part. Those portions of Ellman's statement of material fact which contain legal arguments and conclusions are stricken. Likewise, those portions that are unsupported by the record will also be stricken, as will be discussed in more detail infra. Regarding Ellman's affidavit, only those statements based on personal knowledge which would be admissible in evidence will be considered at the summary judgment stage. Fed.R.Civ.P. 56(e);

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Hong v. Children's Memll Hosp., 993 F.2d 1257, 1265 P 1h Cir. 1993), cert. denied, 511 U.S. 1005 (1994).On October 27, 2000, Ellman filed a "Supplementary Affidavit" in support of her motion for summary judgment, and on November 15, 2000, filed a "Second Supplementary Affidavit" in support of her motion. The court finds both of these affidavits are in complete derogation of the rules. Apparently, Ellman is of the impression she can file whatever she wants, whenever she wants. However, Ellman is aware of this court's approach to her practice of filing "supplemental affidavits," based on her experience in previous litigation before this court.. See Ellman v. Hentges, No. 96 C 56217, slip op. at 2-4 n.1 (N.D. Ill. Aug. 29, 1997) (Reinhard, J.).

If allowed, Ellman's nonstop filings would force the court to spend an undue amount of time sorting through an unorganized record, rendering Local Rule 56.1 meaningless. Under the local rules, the court is entitled to limit its analysis of the facts on summary judgment to evidence that is properly identified and supported in the parties' statements. Bordelon, 233 F.3d at 529. Thus, the court will disregard both the "supplementary affidavit" and the "second supplementary affidavit." See id.

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III. Facts-3

Ellman works as a school psychologist for the school district. (LR56.1 (a) P 1) She started working for the school district for the 1988-89 school year and at the time of her hire, was fifty-one years old. (Id. P 2) During Ellman 's entire employment at the school district, she has never been terminated, suspended, demoted, received a less distinguished job title, had a salary decrease, or lost any benefits. (Ld. P 3)

She has been a member of a union during her employment with the school district and has been subject to a collective bargaining agreement ("Agreement") between the school district and union. (Id. P 4) The Agreement addresses the issue of covered employees' salaries, which includes Ellman, based on a salary schedule reflecting an employee's education, graduate credits, and years of experience. The Agreement does not provide for overtime, and provides that the normal school day includes before and after school professional responsibilities. (Id. (PP 5, 8) The Agreement also has a binding arbitration clause. (Id. P 41) Under this clause, if an employee covered by the Agreement believes the school district has violated the Agreement, the

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3. References to LR56.1(a) in this section are to the school district's statement of facts. References to LR56.1(a) in section IV(B) infra, wherein Ellman 's motion for partial summary judgment is discussed, are to Ellman 's statement of facts.

Appendix C; Continuing

employee must file a grievance; if the grievance is not resolved satisfactorily, it is submitted to arbitration. (Id.)

Ellman receives a letter at the beginning of each school year indicating her salary for that year. The job description for Ellman 's position includes actively participating in staffings and special education conferences. (Ld. 11 10) Special education conferences can be scheduled before, during, or after students are dismissed from their respective buildings to accommodate parents' schedules. (Id. P 11)

From the 1997-98 school year to the present, the school district has employed three full-time psychologists, all of whom are female: Ellman (d/o/b June 10, 1 937), Ann Braasch (d/o/b May 23, 1943), and Dianne Wise (d/o/b January 25, 1960), although Wise no longer works for the school district. (Id. 11 12-15) From 1996 until the present, Ellman 's yearly salary has consistently been higher than that of both Braasch and Wise. (.Id.) Neither Ellman, Wise, nor Braasch receive overtime pay for doing work considered to be within the school psychologist job description. (Id. P 16)

Throughout Ellman 's employment with the school district, she received performance evaluations in accordance with Article IV of the Agreement. (Id. 1 19) On July 14, 1994, Ellman requested clarification from her supervisors regarding her job responsibilities. In response, her supervisors wrote a document

entitled, "Criteria for Successful Performance 1994-95," which she perceived to be a negative evaluation. (Id. 1 20; Hentges Aff., 1 16, Exh. 4) At the beginning of the 1995-96 school year, the school district and union agreed that the school district would not use this document for Ellman's evaluations and to delete any references to it. (LR56.1(a) 1 21; Hentges Aff., Exh.1 6 Exh. 5) The document has never been used again to evaluate Ellman's job performance. (LR56.1(a) P21, Hentges Aff., P16) In Ellman's 1998-99 performance evaluation, she received positive comments in the formative appraisal and was rated either "excellent' or 'satisfactory' in all categories of the summative evaluation (LR56.1(a) P23, Hentges Aff., Exh. 6) Ellman's 1998-1999 evaluation was conducted using the same procedure and format as for all other certified staff and applying the same performance criteria used for all ancillary personnel, which includes psychologists (LR56.1(a) P24)

In the 1997-98 school year, Ellman split her time between the Westwood Early Learning Center ("Westwood") and the Woodstock High School (""Woodstock"). Westwood's principal assigned Ellman to use a custodian storage room. However, Ellman objected and as a result, shared her old office with the other psychologists. (Pl. dep., p. 129) Thus, she never used the custodian storage room as her office at Westwood. (LR56.1(a) 1 25; Pl. dep., p. 130) The following year, the early learning center was moved out

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of Westwood to another school, and was renamed the Verda Dierzen Early Learning Center (""Verda Dierzen"). (Pl. dep., p. 130) Ellman worked at Verda Dierzen one day per week. (Id. P. 133) There, she was assigned and used an interior library office; on the days she did not work at Verda Dierzen, another psychologist shared the same office. (LR56.1(a) !1 26) After she complained about how small the library office was, she was moved to a conference room which had previously been used as the principal's office. (Id.; Pl. dep., pp. 133-34, 137) She used the library office for one or two months before being moved into the conference room. (LR56.1(a) P 27)

Ellman also complained about her room assignment at Woodstock, Room 226. She complained about no windows, uncontrolled heating units, no ventilation, loose ceiling tiles, problems with the fan, and asbestos. (Id. P 28) Her complaints were brought to the attention of Bruce Lane, the Assistant Principal, and Will Sivertsen, the Director of Buildings and Grounds. (Id.) Either Lane or Sivertsen took steps to investigate, address, and fix her complaints. (Id. P 29) In a memo dated October 8, 1997, Lane summarized Ellman's complaints about Room 226 and explained what the staff had done to address her concerns. (Def. Exh. 14)

For some of Ellman 's complaints, such as the lack of windows, there were no solutions. Lane noted that the other

three classrooms and one office area in the vicinity also lacked windows. (Id.) He also noted the heating and ventilation system was the same for the other classrooms and office in that area. (Id.) As for Ellman 's asbestos concerns, the school informed her of the asbestos management plan on file at the office of the Director of Buildings and Grounds, and ordered air quality tests to be performed in Room 226.[4] (LR56.1(a) Exh. 15, 16) In a memo dated November 6, 1997, Sivertsen notified Ellman the air quality testing showed all readings for total dust and respirable dust were well below the permissible exposure limits set by law. (LR56.1(a) 1 31, Exh. 16) After her complaints, she was assigned another room. (LR56.1(a) 1 32)

Ellman has filed one grievance for the 1997-98 through 1999-2000 school years. (.Ld. P 4 2) The grievance, filed in October 1997, concerns a memo Dr. Ravitz wrote about Ellman missing several meetings and failing to fulfill her professional responsibilities. (Id.; Ravitz Aff., 1 7, Exh. 12) As a result of the grievance, Dr. Ravitz modified the memo; neither Ellman nor the union have pursued the grievance to arbitration. (LR56.1(a) P 42)

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4. According to Sivertsen 's memo to Ellman, the environmental company which prepared the management plan certified there was no "friable asbestos containing material" (as defined by state regulations) located in the ceiling or ceiling tile in Ellman 's part of the building. (LR56.1(a) P 30, Exh. 15)

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IV. Analysis

A Sumnary Judment Standard

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). The question to be determined is whether, if the record of the summary judgment proceeding were were the record at trial, a reasonable fact finder could find in favor the party. Tobey v. Extel/JWP, Inc., 985 F.2d 330, 332 (7t' Cir. 1993). When the parties file cross-motions for summary judgment, the court construes all inferences in favor of the party against whom the motion under consideration is made. Wilson v. Chrysler Corp., 172 F. 3d 500, 511 (7t' Cir. 1999) However, conclusory allegations will not win the day. Miller v. Borden, Inc., 168 F.3d 308, 312 (7 th Cir. 1999). Intent and credibility are crucial issues in employment discrimination cases and, therefore, the summary judgment standard is applied with rigor in such cases, but summary judgment will not be defeated just because motive or intent are involved. Id. (citations omitted).

Appendix C; Continuing

B Ellman's Motion for Partial Summary Judgment

At the outset, it should be noted Ellman's "Fact" section in her motion for partial summary judgment contains no cites to any portion of the record and appears to be, by and large, a repeat of the allegations in her complaint. it is well-settled that at the summary judgment stage, Ellman must do more than repeat the pleadings, particularly if are not within her personal knowledge, to win her motion. Cf. Shermer v. Illinois Dep't, 171 F.3d 475, 477 (7th Cir. 1999 (nonmovant must do more than merely rest on pleadings to overcome motion for summary judgment). Thus, the court will disregard the "Fact" section of Ellman 's motion for partial summary judgment.

The court's job in analyzing Ellman 's statement of facts has been rendered exceedingly difficult because many of her statements are unsupported by the record and because when Ellman "cites" to the record, she oftentimes simply refers to "exhibits" to one of her affidavits. She has filed many affidavits, two of which have been stricken, and she has filed many "exhibits." A repeated cite is, "see affidavit and supplement to affidavit of Marilyn Ellman." See, e.g., LR56.1(a) PP 3(c), (d), (f). It is not the court's job to take Ellman 's unsupported statements on faith or to scour the record to unearth material factual disputes. Carter v. American Oil Co., 139 F.3d 1158, 1163 (7 th

Cir. 1998). Thus, paragraphs 3(c), (d), and (f) of Ellman 's LR56.1(a) statement are stricken.

In deciphering Ellman 's cites, it becomes apparent that Ellman is relying on her "'supplementary affidavit" and "second supplementary affidavit," both of which have been stricken as discussed in section II above. Thus, paragraphs 3(a), (b) (in part), (e), and (g) of Ellman 's LR56.1(a) statement are stricken. Even if the court were to consider these "affidavits," the record shows Ellman 's "proof" does not support her claims. For example, Ellman claims that younger and male employees are paid for after school meetings-, while she is not. (LR56.1(b) 9[3(a)) In claiming this, Ellman lists a host of employees who purportedly received extra pay, and has submitted a slew of documents regarding payroll information, including W-2 statements. None of these documents are supported with proper foundation and, lacking such foundation, tell the court nothing as to whether younger and/or male employees were paid for after school meetings while she was not. (The remainder of her exhibits suffer from the same defects.)

Ellman also claims, without any cite to anything in the record, that Bev Alfeld, Apollonia Reckamp, and Inez Petersen were forced to retire and/or leave the district. (LR56.1(a) 11 4) Likewise, Ellman claims Eugene Schaefer and Don Deller are male employees over age sixty who were not coerced to retire. (Id. P

5) These statements are unsupported by the record and the court
will disregard them.

In short, Ellman has proffered no admissible evidence to support her assertion that she is entitled to summary judgment on any of her claims. Ellman's motion for summary judgment is denied.

C. The School District's Motion for Summary Judgment

1. Issue and Claim Preclusion

The crux of Ellman 's suit appears to center on the following complaints:

- the school district assigned Ellman to a custodian's storage room to be used as her office;

- the school district assigned her to a substandard classroom at Woodstock;

- the school district required Ellman to work overtime without compensation;

- the school district has harassed and threatened Ellman with unwarranted discipline;

- the school district continues to apply the "Criteria for Successful Performance 1994-95" to her performance evaluations; and, on two occasions the school district failed to notify Ellman that school was canceled due to inclement weather. (Compl. PP 13-18)

Appendix C; Continuing

Under res judicata (now commonly referred to as claim preclusion), a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. Montana v. United States, 440 U.S. 147, 153 (1979); People Who Care v. Rockford Bd. of Educ., 68 F.3d 172, 177 (7 th Cir. 1995). Under collateral estoppel (now commonly referred to as issue preclusion), once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. Montana, 440 U.S. at 153; Adair v. Sherman, 230 F.3d 890, 893 (7t' Cir. 2000).

The court finds Ellman is collaterally estopped from pursuing her claim that defendants discriminatorily continue to apply the "Criteria for Successful Performance 1994-95" to her performance evaluations. In Ellman v. Hentges, No. 96 C 50217 (N.D. Ill. filed July 5, 1996) (Reinhard, J.), aff'd, 165 F.3d 31 (7 th Cir. 1998) (unpublished) *(available at* 1998 WL 560754), Ellman sued Hentges and the school district, alleging the defendants discriminated against her because of her age, in violation of the ADEA, and retaliated against her for opposing their unlawful employment practices. Hentges, No. 96 C 50217,

slip op. at l. [5] In granting the defendants' motion for summary judgment, this court rejected Ellman 's complaints regarding a remediation plan the school district applied to her during the 1994-95 school year. Hentges, slip op. at 5-6, 14. This court held the evaluation did not constitute an adverse employment action under the ADEA. Id. at 14.

Thus, the "Criteria for Successful Performance 1994-95" about which Ellman complains here was at issue in Hentges. The issue was actually litigated, as reflected by the court's analysis in granting defendants' motion for summary . Judgment in Hentges, wherein the court determined that the evaluation did not constitute an adverse employment action. This finding, in turn, was essential to this court's ultimate holding that defendants did not violate the ADEA. Finally, both Ellman and the school district were parties in the prior action.[6]

Ellman argues the school district has continued to impermissibly use the 1994-95 evaluation and that this continued

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5. This court's unpublished opinion granting defendants' motion for summary judgment in Hentges is attached as an exhibit to the school district's statement of material facts in this case.

6. Issue preclusion, rather than claim preclusion, applies to Count II, Ellman 's sex discrimination claim, because the court in Hentges was analyzing the remediation plan in the context of the ADEA. The court does not reach the issue of whether issue or claim preclusion apply to Ellman's alleged IHRA violation in Count !, as it is being dismissed on another ground, to be discussed infra.

use gives rise to a new claim which has not been litigated. The problem with this argument is Ellman 's complete lack of proof.[7] In fact, she admits the "Criteria for Successful Performance 1994-95" document has never been used again to evaluate her job performance. (LR56.1(a) 1 21, Hentges Aff., 1 16) Her 1998-99 performance evaluation was conducted using the same procedure and format as for other psychologists, and she received a positive evaluation for the 1998-99 school year. (LR56.1(a) 11 23-24, Hentges Aff., Exh. 6)

The court also finds Ellman is collaterally estopped from arguing she is entitled to overtime pay. This court in Hentges addressed Ellman 's claims regarding overtime, and found them to be wholly lacking. Hentges, slip op. at 17-18. This court found there was no evidence Ellman was entitled to overtime pay, and stated she is employed on an annual salary basis, and the collective bargaining agreement is silent on the issue. Id. at 10-11. Thus, Ellman 's overtime claim here was involved in Hentges, was actually litigated, a determination of the issue was essential to a finding that defendants did not violate the ADEA, and both Ellman and the school district were in the prior action.

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7. Even if the court were to consider Ellman 's "supplementary affidavit" and "second supplementary affidavit," no evidence exists therein to support Ellman 's bald assertion that the school district continues to use the 1994-95 evaluation.

Appendix C; Continuing

2. Count I - The Illinois Human Rights Act

In Count I, Ellman bases her age discrimination claim on the IHRA. (Compl. PP 12(a), 21) The school district argues Ellman 's claim is barred because she failed to exhaust her administrative remedies under the IHRA, and the court agrees. Courts do not have jurisdiction to hear independent actions for civil rights violations under the IHRA. 775 ILCS 5/8-111(C); Mein v. Masonite Corp., 485 N.E.2d 312, 315 (Ill. 1985); see also Talley v. Washington Inventory Serv., 37 F.3d 310, 312-13 (7 th Cir. 1994). Rather, judicial review for an alleged violation of the IHRA is available only after the Illinois Human Rights Commission ("IHRC") has issued a final order on a complaint. Flaherty v. Gas Research Inst., 31 F.3d 451, 458 (7 1h Cir. 1994); Talley, 37 F.3d. at 312-13; Rotter v. Brinker Rest. Corp., No. 98 C 50256, 1999 WL 33148742 (N.D. Ill. Sept. 3, 1999) (Reinhard, J.). Ellman never brought her IHRA claim to the IHRC and, therefore, failed to exhaust her administrative remedies. McCraven v. City of Chicago, 18 F. Supp. 2d 877, 882 (N.D. Ill. 1998).

Moreover, Ellman 's EEOC Right to Sue Notice does not serve as a substitute for a final order from the IHRC. Rotter, 1999 WL 33148742, at *1; see also Zamani v. American Dental Ass'n, No. 98 C 1022, 1998 WL 812545, at *3 (N.D. Ill. Nov. 18, 1998); Moore v. Jewel Food Stores, Inc., No. 97 C 6501, 1998 WL 102629, at *4 (N.D. Ill. Mar. 3, 1998). The IHRC' s workshare agreement with

the EEOC does not alter the IHRC's exclusive jurisdiction over the IHRA. Zamani, 1998 WL 812545, at *3. To hold otherwise would allow Ellman to easily circumvent the IHRA's comprehensive scheme of remedies and administrative procedures, a result the Illinois legislature did not intend. Rotter, 1999 WL 33148742, at *3; Moore, 1998 WL 102639, at *4. Thus, the school district's motion is granted as to Count 1.[8]

3. Count II - Sex Discrimination Based On Title VII

Excluding those complaints the court has found Ellman is collaterally estopped from pursuing, Ellman's Title VII sex discrimination claim is based on the following conduct: (1) the school district assigned her to a custodian's storage room to be used as her office; (2) the school district assigned her to a substandard classroom at Woodstock; (3) the school district has harassed and threatened Ellman with unwarranted discipline; and, (4) on two occasions the school district failed to notify Ellman that school was canceled due to inclement weather.

Ellman has produced no direct evidence of sex discrimination. Therefore, the court will analyze her claims under the indirect, McDonnell Douglas burden-shifting test. Simpson v. Borg-Warner Auto., Inc., 196 F.3d 873, 876 (7 th Cir. 1999). Thus, Ellman must show: (1) she is a member of a

8. The court's holding also applies to Ellman 's sex discrimination and retaliation claims brought pursuant to the IHRA in Counts II and III. (Compl. PP 28, 37)

Appendix C; Continuing

Protected class; (2) she was meeting the school district's legitimate expectations; (3) she suffered an adverse employment action; and, (4) the school district treated similarly situated, non-protected employees more favorably. Id. If Ellman establishes a prima facie case, the school district must articulate a legitimate, non-discriminatory reason for the adverse employment decision. Id. Ellman may then present evidence from which a reasonable fact finder could conclude the school district's proffered reason was pretextual. Id.

Ellman has not successfully established a prima facie case of sex discrimination with respect to any of her claims for the simple reason that none of her complaints rise to the level of an adverse employment action. For an employment action to be considered adverse within the meaning of Title VII, the employee must suffer a materially adverse change in the terms and conditions of her employment that is more disruptive than a mere inconvenience or alteration of job responsibilities. Stockett v. Muncie Ind. Transit Sys., 221 F.3d 997, 1001 (7 th Cir. 2000); Bell v. EPA, 232 F.3d 546, 555 (7 th Cir. 2000). As this court explained to Ellman in Hentges, slip op. at 13, "'not everything that makes an employee unhappy is an actionable adverse action.'" (quoting Smart v. Ball State Univ., 89 F.3d 437, 441 (7th Cir . 1996)). The action must constitute a significant change in employment status, such as hiring, firing, failing to promote,

reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Burlington Indus., Inc. v. Ellerth, 542 U.S. 742, 761 (1998).

None of Ellman's room assignments amount to an adverse employment action within the meaning of Title VII. Ellman admits that after she complained about her room assignment at Westwood, she never actually used the ""custodian storage room." Instead, she shared her former office with other psychologists. As for the library room to which Ellman was assigned at Verda Dierzen, she claims it was too small and lacked privacy. While Ellman may have felt the area was too smal.1, there is no evidence it was at the level of a "'dingy closet" rendering her wholly incapable of doing her job. See Place v. Abbott Lab., 215 F.3d 803, 810 (7th Cir. 2000), cert. denied, U.S. _, 121 S. Ct. 768 (2001). On the contrary, the space was big enough for a table, two student chairs, two adult chairs, and cabinets and shelves for storage space. (LR56.1(a) 9[26) Another school psychologist shared the same office and used it on days Ellman was not there. (Id.) Regardless, after only one or two months, Ellman was transferred to a conference room which had previously served as a principal's office. Obviously, this was an acceptable substitute. As for Woodstock, Ellman 's room, Room 226, was similar to a number of other classrooms and an office in the same area. In fact, Room 226 was used as a classroom with room for up

Appendix C; Continuing

to ten students plus a teacher for four years without complaint. (LR56.1(a) 1 28) School officials addressed Ellman 's concerns and ultimately transferred her to another office.

These facts show none of the room assignments at issue materially adversely changed the terms and conditions of her employment. At most, Ellman was unhappy about her room assignments but, as stated above, this does not constitute an adverse employment action.

As for Ellman 's claim that the school district has harassed and threatened her with unwarranted discipline, apparently this claim is based on two incidents. First, Dr. Ravitz wrote a memo in October' 1997 about Ellman missing several meetings and failing to fulfill her professional responsibilities. (LR56.1(a) 11 34) The union grieved the memo and Dr. Ravitz modified it. Ellman, however, was not disciplined. (Id.) Second, a school administrator had a discussion with Ellman in August 1997 regarding her refusal to work with other psychologists in scheduling available working space at Westwood. (Ld. 1 35) Again, however, Ellman was not disciplined as a result of this incident. (Id.) These two incidents, which did not result in a suspension or loss of pay, or were even considered discipline, do not constitute adverse employment actions under Title VII. Likewise, Ellman 's complaint that the school district failed to call her on two occasions about snow days, although inconvenient,

also does not rise to the level of an adverse employment action. The school district's motion is granted with respect to Count II.

4. Count III - Retaliation Under Title VII

In Count III, Ellman alleges she was retaliated against for filing charges of discrimination. Title VII prohibits an employer from retaliating against an employee who makes a charge of discrimination. 42 U.S.C. § 20OOe-3(a). In keeping with the McDonnell Douglas burden-shifting approach, Ellman must initially establish a prima facie case of retaliation. Oest v. Illinois Dep't of Corr.., _ F.3d _, 2001 WL 122111, at *10 (7t' Cir. Feb. 14, 2001). To do so, Ellman must show: (1) she engaged in protected activity; (2) she suffered an adverse employment action subsequent to the protected activity; and (3) a causal connection exists between the adverse employment action and her participation in the protected activity. Id. Construing Ellman 's claim broadly, it appears all of the behavior which supports her Title VII sex discrimination claim also forms the basis of her retaliation claim in Count III. Thus, Ellman 's Title VII retaliation claim fails for the same reason as her Title VII sex discrimination claim - she has failed to show she suffered an adverse employment action. The school district's motion is granted with respect to Count III.

Appendix C; Continuing

5. Count V - Breach of Contract

In her Complaint, Ellman alleges she and the school district were parties to a written employment contract. (Compl. P 51) Ellman alleges the school district breached the contract "both in spirit and as written" by subjecting her to work without compensation, by subjecting her to different standards than other employees, and by discriminating against her due to her age and sex. (Id.) The school district argues Ellman 's state law breach of contract claim is preempted by the IHRA, relying on Geise v. Phoenix Co. of Chicago, Inc., 639 N.E.2d 1273 (Ill. 1994).

In Maksimovic v. Tsogalis, 687 N.E.2d 21 (Ill. 1997), Illinois Supreme Court, in clarifying its holding in Geise, stated that whether a court may exercise jurisdiction over a state law claim depends on whether the claim is inextricably linked to a civil rights violation such that there is no independent basis for the action apart from the IHRA itself. Here, Ellman alleges she was subjected to different standards than other employees and was discriminated against because of her age and sex. These claims are inextricably linked to the IHRA because without a violation of the Act, there is no breach of contract claim. Thus, these claims are preempted by the IHRA. See Wootten v. Fortune Brands, Inc., No. 98 C 4603, 1999 WL 705763, at *2-3 (N.D. Ill. Aug. 27, 1999) (breach of contract claim based on promise of harassment-free environment

inextricably linked to alleged civil rights violation and preempted by IHRA, but remaining two breach of contract claims, based on an alleged breach of a termination policy and employer's promise to thoroughly investigate harassment claims were not preempted). Ellman 's claim that she was forced to work without compensation, however, is not inextricably linked to an alleged civil rights violation because the court need not examine whether the IHRA was violated to determine whether a contract has been breached. See id. at *3. However, her claim based on compensation fails for another reason: this is simply her unpaid overtime claim cloaked in another form. As discussed in section IV(C)(1) above, she is collaterally estopped from pursuing this claim. Thus, the school district's motion is granted as to Count V.

V. Conclusion

For the reasons set forth above, the school district's motion to strike is granted in part and denied in part. Ellman 's Rule 56 motion for summary judgment is denied. The school district's Rule 56 motion for summary judgment is granted. This cause is hereby dismissed in its entirety.

ENTER

"sPhillip G. Reinhard".
Phillip G. Reinhard, Judge
United States District Court
Dated: "sFebruary 26, 2001"

Appendix D

United States District Court, Northern District of Illinois

CASE NUMBER: 99 C 50017

Philip G. Reinhard, Judge

DATE 8/22/2001

99 C 50017

Ellman vs. Woodstock #200 School District

MOTION:
DOCKET ENTRY:

(10) For the reasons stated on the reverse, defendant's motion for attorneys 'fees and costs is granted in part. Defendant is to submit a revised request within 14 days after receipt of this order; plaintiff is to respond within 7 days.

"s Philip G. Reinhard".

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ORDER

On February 26, 2001, the court granted defendant Woodstock #200 School District's ("the School District") Rule 56 motion for summary judgment and dismissed the cause in its entirety. Plaintiff Marilyn Ellman appealed this decision, which is currently pending. On May 25, 2001, 88 days after entry of judgment, the School District filed a motion for attorneys' fees under 42 U.S.C. § 20OOe-5(k), Fed.R.Civ.P.54(d)(2),and R54.3 and for related non-taxable costs under Fed.R.Civ.P. 54(d)(1).

Ellman initially argues the School District's motion is untimely because it was not filed within 14 days after entry of judgment, in accordance with Federal Rule of Civil Procedure 54. The School District argues Rule 54 must be read in conjunction with Local Rule 54, and it timely filed its motion within Local Rule 54(b)'s 90-day deadline. The School District is correct. Federal Rule of Civil Procedure 54(d)(2)(B) states, " [u] nless otherwise provided by statute or *order of the court,* the motion must be filed and served no later .than 14 days after entry of judgment[.J]" (emphasis added). Local Rule 54.3(b) states, "[e]ither before or after the entry of judgment the court may enter an order with respect to the filing of a fee pursuant to Fed.R.Civ.P.54. Unless the court's order includes a different schedule for such filing, the motion shall be filed in accordance with the provisions of this rule and shall be filed and served no later than 90 days after the entry of the judgment ... on which the motion is founded. "Indiana's Local Rule 54. 1 is identical, and the Seventh Circuit has held the local rule was an order of court which served to modify Fed. R. Civ. P. 54's 14-day filing deadline. See Johnson v. Lafayette Fire Fighters Ass'n Local 472, 51

F.3d 726, 728-29 (7'" Cir. 1995). Thus, the School District's petition was timely filed.[1]

Regarding its request for attorneys' fees, the School District argues Ellman 's claims were frivolous, unreasonable and without foundation so as to meet the prevailing defendant standard under Title VII See Christiansburg Garmet Co. v. EEOC, 434 U.S. 412 (1978); Munson v. Milwaukee Bd. of Sch. Dir., 969 F.2d 266, 269 (7flCir. 1992). The court agrees with the School District in part. Of the discrimination and retaliation complaints which formed the crux of Ellman 's lawsuit here, see Order dated Feb. 26, 2001, at p. 13, Ellman had previously litigated two identical complaints in Ellman v. Hentges, No. 96 C 50217 (N.D. Ill. filed July 5, 1996) (Reinhard, J.), aff'd, 165 F. 3d 31 (7" Cir. 1998) (unpublished). These claims were meritless because Ellman fully litigated them in Hentges. Moreover, Ellman 's decision to repeatedly litigate issues is disturbing in the sense that she appears to ignore those court directives with which she disagrees, resulting in needless work for a court with an overcrowded docket. For example, Ellman was warned in the Hentges

[1] Ellman also claims the School District did not comply with LR 54.3(d)(4) in that it did not supply her with the relevant information within 21 days after judgment was entered. This is not true. The School District's submissions show it supplied its time and work records to Ellman via overnight delivery on March 16, 200 1. (Def. Exh. 1). This was within 21 days of judgment.

case to stop filing materials without permission, yet did the same thing in this case. See Order dated Feb. 26, 2001, at p.4. While the remainder of Ellman' s sex discrimination and retaliation claims come close to the line of meritless (none of them rose to the level of constituting an adverse employment action under Title VII), the meaning of adverse employment action involves a legal interpretation, of which lay people maybe unaware. However, as the court has twice admonished Ellman, not every action the School District takes which causes her to be unhappy should be the subject of a **federal lawsuit, and Ellman would do** well to keep this in mind in the future.

Thus, Ellman is required to pay $254.70 in non-taxable costs as expenses, an amount she has never contested. Of the $25,357.50 the School District seeks in attorneys' fees, it is to submit, within 14 days after receipt of this order, documentation showing what portion of those fees were the result of the two **claims Ellman had** already fully litigated in Hentges. (See Order dated Feb. 26, 2001, at pp. 13-16). Ellman is given 7 days to respond.

The School District's request for an injunction barring Ellman from filing any more lawsuits against the School District and its employees without permission from the court is denied.

Appendix E

United States District Court, Northern District of Illinois

Philip G. Reinhard, Judge

CASE NUMBER 99 C 50017

10/1/2001
Ellman vs. Woodstock #200 School District

DOCKET ENTRY:
(10 For the reasons stated on the reverse Memorandum Opinion and Order, defendant is awarded $925.00 in attorneys' fees. This is in addition to the $254.70 plaintiff was previously ordered to pay in non-taxable costs as expenses.

"s/Philp G. Reinhard".

MEMORANDUM OPINION AND ORDER

On August 22, 2001, the court granted defendant's motion for attorneys, fees and costs in part, finding defendant was a prevailing defendant, see Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978); Munson v. Milwaukee Bd. of Sch. Dir., 969 F.2d 266, 269 (7th Cir. 1992), with respect to two of plaintiff's claims. The court found plaintiff's frivolous claims were based on two complaints she had previously litigated: defendant's failure to pay her overtime, and an allegedly discriminatory 1994-95 performance review. In response to the court's order, defendant submitted a revised petition for attorneys'

fees, requesting a total of $6,841.58. Defendant divided the fees into two categories: , (1) $925 in fees specifically described in its attorneys' bills as dealing with the claims found to be frivolous; and, (2) $5,916.58 in fees which are a percentage of the total fees generated in preparing its motion for summary judgment.

A prevailing plaintiff who has been successful with some claims but not all may recover attorneys' fees related to the successful claims. Hensley v. Eckerhart,. 461 U.S. 424, 433-35 (1983) ; see also Farrar v. Hobby, 506 U.S. 103 (1992). This rule applies with equal force to prevailing defendants. See Hensley, 461 U.S. at 435 n.10. The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rate. Id. at 437. Although an attorney is not required to record in great detail how each minute of his time was expended, the records must provide a proper basis for determining how much time was spent on particular claims. Id. at 437 n.12.

The billing records attached to defendant's supplemental response show the requested $925 in fees are directly related to plaintiff's overtime and/or 1994-95 performance evaluation claims. The entries, for example, refer to payroll documents, payroll records or special education conferences (which relate to plaintiff's overtime claim because she was complaining she had to attend such conferences without being paid overtime). Thus, defendant has satisfied its burden with respect to these fees.

However, defendant has not satisfied its burden with respect to the more general fees relating to its motion for summary judgment. Although defendant has attempted

to prorate the fees in a fair and equitable manner, the overtime and performance evaluation claims were part of plaintiff's overall discrimination and/or retaliation claims. See Hensley, 461 U.S. at 435. Defendant would have filed its summary judgment motion regardless of these claims, and it is difficult to determine what portion of its time and efforts were directed solely to the frivolous claims. See id. The majority of the work relating to the frivolous claims would have been of a factual nature (which is reflected in Denise McCracken's entries totaling $925), rather than of a legal nature, such as that involved in drafting defendant's motion for summary judgment. The court did not declare the majority of plaintiff's claims to be frivolous (although they were borderline) , and the amount of $925 accurately and proportionately accounts for that portion of the litigation which was frivolous, unreasonable and without foundation. See Farrar, 506 U.S. at 114-15.

Plaintiff has not contested the number of hours spent or the hourly rate, and the court finds both to be reasonable. Thus, defendant is awarded $925 in attorneys' fees.

Appendix F:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS WESTERN DIVISION

Marilyn 1. Ellman,

v. Plaintiff,

WOODSTOCK #200 SCHOOL DISTRICT,

Defendant.

Case No. 99C50017

Judge Philip G. Reinhard

Magistrate P. Michael Mahoney

Filed June 21, 1999

MOTION FOR CHANGE OF VENUE

Marilyn Ellman, Plaintiff, brings forth her motion to request a change of Venue to the Eastern Division: Everett McKinley Dirksen United States Courthouse in Chicago, Illinois 60604.

Appendix F; Continuing

Rene Hernandez, Attorney stated several times to me that I was not liked by Judge Reinhard and that my case would always be dismissed before trial.

It is impossible for me to obtain a replacement attorney on a contingency basis in the Rockford area. All of the Chicago lawyers I contacted refused my case because of its location, but may reconsider if I obtain a change of venue to the Dirkson building.

"s Marilyn Ellman".

Marilyn Ellman, Plaintiff

Appendix G

i

United States District Court, Northern District of Illinois

Philip G. Reinhard, Judge

Date: July 12, 1999

99 C 50017

ELLMAN vs. WOODSTOCK#200 SCHOOL DISTRICT

DOCKET ENTRY:

(10) For the reasons stated on the reverse, plaintiff's motion for change of venue is denied.

"sPhilip G. Reinhard".

ORDER

Plaintiff, Marilyn 1. Ellman, has filed a pro se motion for change of venue which requests her case be transferred to the Eastern Division because her former attorney told her she was "not liked" by this court and her case would be dismissed before trial. Plaintiff has failed to meet the timely filing of the motion or the sufficient affidavit requirements if the motion is intended under 28 U.S.C. § 144.

Nor has plaintiff shown any basis for disqualification under 28 U.S.C. ; 455 as prior judicial rulings are insufficient to support disqualification, and her former attorney's alleged statement does not show extra-judicial conduct, or a deep seated favoritism or antagonism that would make fair judgment impossible. See Liteky v. United States, 510 U.S.540 (1994). Should the motion also be one intended as a change of venue to the Eastern Division under 28 U. S.C ; 1404 because she cannot find a lawyer in Rockford (Western Division), there is no showing for transfer for the convenience of the parties, witnesses, or in the interest of justice, Concrete Structures of the Midwest v. TRECO Constr. Serv., Inc., 95 C 50211, 1996 WL 67213 (N.D. Ill. Feb. 16, 1996), even if plaintiff, who filed the action here can now bring a motion to transfer venue.

Appendix H

United States' Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 5, 2002
Nos. 01-1779 and 01-3777

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

MARILYN I. ELLMAN,
Plaintiff-Appellant,
v.
WOODSTOCK #200 SCHOOL DISTRICT,
Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Western Division.

No. 99 C 50017

Philip G. Reinhard, Judge

Upon consideration of the MOTION TO SUSPEND APPEAL TO ALLOW ELLMAN TO FILE AN EXTRAORDINARY WRIT TO THE SUPREME COURT OF THE UNITED STATES FOR DIRECTION, filed on February 26, 2002, by the pro se appellant,

IT IS ORDERED that the motion is DENIED.

Supreme Court, U.S.
FILED
AUG 2 5 2003
OFFICE OF THE CLERK

No. 03-119

In The

Supreme Court of the United States

MARILYN I. ELLMAN,

Petitioner,

v.

WOODSTOCK #200 SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS LOCAL RULES

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STATUTE INVOLVED

28 U.S.C. § 2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c) (1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for

comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

REASONS FOR DENYING THE WRIT

I. Introduction

> [W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.

McNeil v. United States, 508 U.S. 106, 113, 113 S.Ct. 1980, 1984, 124 L.Ed. 2d 21 (1993) (citations and footnotes omitted).

Rather than mounting legal arguments in support of her Petition for Writ of Certiorari, Petitioner Marilyn Ellman, who was twice sanctioned for frivolous actions in the courts below, predominantly repeats her underlying factual allegations although they are unnecessary to resolve her ten questions presented. As is her practice when appearing in a new forum, Petitioner restates for this Honorable Court unsupported allegations in her original complaint as well as unsupported allegations that were stricken from the record. Petitioner seeks to persuade this Honorable Court that she has been subjected to such atrocities at the hands of her employer, the Respondent Woodstock Community Unit School District No. 200, that justice can only be served if she, as a pro se litigant, is excused from evidentiary rules, procedural rules and the legal standards governing motions for summary judgment.

In this regard, Petitioner seeks to be the standard bearer for all pro se litigants who are not paupers but who cannot afford an attorney because they are of modest means.[1] The crux of Petitioner's Petition for Writ of Certiorari is that although litigants who are represented by counsel must abide by procedural and substantive rules for *summary judgment*, she has the wholesale discretion whether or not to investigate or abide by the same standards because of her choice to proceed pro se. Petitioner is plainly wrong. While pro se litigants are afforded some leniency when practicing in an unfamiliar forum, a litigant's choice to proceed pro se does not abrogate the requirement that procedural and substantive summary judgment rules must be followed.

Moreover, she was given adequate notice of the basic requirements for motions for summary judgment and an opportunity to correct her failure to comply. She chose not to comply with these basic procedural requirements and provides no support for being given a third chance. (Based upon her prior conduct, there are no grounds to believe

---

[1] Ironically, Petitioner simultaneously informs this Court that she retained an attorney in a previous lawsuit and retained an attorney at the outset of the pending litigation who eventually withdrew for unstated reasons. (Petitioner's Petition for Writ of Certiorari, pp. 15, 23-24.) Petitioner is also gainfully employed by Respondent as a school psychologist and has consistently received a higher yearly salary than other psychologists employed by Respondent. (*Ellman v. Woodstock #200 School District*, 2001 U.S. Dist. LEXIS 2519, **6-7 (N.D. Ill. Feb. 26, 2001). Decision reproduced at Petitioner's Appendix C, pp. 16-17.) Accordingly, Respondent respectfully submits that, in light of her salary and the availability of an award of attorneys' fees to the prevailing party, Petitioner either freely chose not to retain counsel or she could not find counsel who would accept her case.

that she would comply with these requirements if given another opportunity to comply.)

Additionally, Petitioner seeks review of the U.S. District Court for the Northern District of Illinois' *Local Rule 54.3* that extends the 14-day timeline in *Fed. R. Civ. P. 54* within which a prevailing party may file a motion for fees and costs to a 90-day timeline. (Rules reproduced at Petitioner's Petition for Writ of Certiorari, pp. 4-5.) Petitioner argues that *Local Rule 54.3* is an impermissible procedural innovation and usurpation of congressional power. However, *Fed. R. Civ. P. 54* plainly states that the timeline may be modified by an order of the court. As an order of the court, *Local Rule 54.3* simply extended the time to file a fees motion as expressly permitted.

Moreover, Petitioner presents questions that were never raised before the United States Court of Appeals for the Seventh Circuit and were never addressed in the Seventh Circuit's decision.

The rules of law at issue have been well established by the United States Supreme Court and the Seventh Circuit. Petitioner simply disagrees with how the properly stated rules of law in issue are implemented in her lawsuit. No important questions of law are raised in the pending Petition for Writ of Certiorari and the Seventh Circuit's decision is not in conflict with well settled law. Therefore, the writ should be denied.

II. Pro Se Litigants Are Required to Follow the Procedural and Substantive Rules Governing Summary Judgment

Petitioner asks to extend the liberal pleading standard afforded to pro se litigants when initiating a lawsuit by relaxing a pro se litigant's obligations to conform with local rules and federal rules governing summary judgment. However, this Honorable Court previously clarified that the liberal interpretation afforded to a pro se plaintiff's complaint in order to avert a motion to dismiss should not be extended to a pro se litigant's burden to follow civil procedural rules. In *McNeil v. United States*, 508 U.S. 106, 113, 113 S.Ct. 1980, 1984, 124 L.Ed. 2d 21 (1993), this Honorable Court ruled "While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, . . . we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel" (citations and footnotes omitted). Writ of Certiorari also was denied to review an affirmed decision against a pro se litigant in which the District Court reiterated, "'although pro-se complaints enjoy a liberal interpretation, a pro-se litigant does not escape the essential burdens necessary to avert summary judgment.'" *Cavelieri-Conway v. L. Butterman & Assoc.*, 992 F.Supp. 995, 1000 n.3 (N.D. Ill. 1998) (*citing, Cabrera v. Peters*, 23 F.3d 410 (Table), 1994 W.L. 164528, at *2 (7th Cir. 1994)) *aff'd*, 172 F.3d 52 (Table) (7th Cir. 1999), *cert. denied*, 528 U.S. 847, 120 S.Ct. 121, 145 L.Ed. 2d 103 (1999).

As to the substantive standards governing summary judgments, this Honorable Court already has clearly articulated and consistently upheld its rulings in *Anderson*

v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2515, 91 L.Ed. 2d 202, 213 (1986) ("Rule 56(c) provides that the trial judge shall then grant summary judgment if there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law."); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed. 2d 265, 273 (1986) ("In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."); and followed in *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed. 2d 538 (1986), outlining the factors a court must take into consideration when ruling on motions for summary judgment.

As with all summary judgments, the court must review both counseled and pro se litigants' records and all reasonable inferences drawn from the record in the light most favorable to the non-moving party. Petitioner apparently would have the standard for pro se litigants reduced to reviewing matters outside the record and all unreasonable inferences in the brightest light most favorable to the pro se litigant. There is simply no support for altering substantive summary judgment standards for pro se litigants and Petitioner offers scant argument in support of her own position.

Petitioner's only definable argument is that *Local Rule 56.1* is invalid because it is a basic procedural innovation that is in conflict with the standard in *Fed. R. Civ. P. 56*. (Rules reproduced at Petition for Writ of Certiorari, pp. 5-7 and 9-11.) Petitioner does not explain how she reached this conclusion. In any event, district courts are

bestowed with the power to prescribe rules for the conduct of their business, so long as the local rules are not inconsistent with the United States Constitution, a statute of the United States or with a national rule governing the conduct of litigation in the United States courts. *28 U.S.C. § 2071(a)*; *Fed. R. Civ. P. 83(a)*. (Statute reproduced above. Rule reproduced at Petition for Writ of Certiorari, p. 11-12.) Pursuant to this power, the U.S. District Court for the Northern District of Illinois promulgated *Local Rule 56.1* that governs the presentation of briefs, facts and supporting materials filed in support and against motions for summary judgment.

Fed. R. Civ. P. 56 governs, in part, the form that admissible evidence may take to support or oppose summary judgment. *Local Rule 56.1* does not conflict with *Fed. R. Civ. P. 56*. Rather, the local rule regulates the business of the District Court by further organizing the manner in which a party's evidence in support or against a motion for summary judgment must be presented. Without a conflict in the rules, Petitioner's argument fails completely. Therefore, this Petition for Writ of Certiorari respectfully should be denied.

III. Petitioner Was Provided Notice of the Rules Governing Summary Judgment and Had the Opportunity to Follow the Rules

The Seventh Circuit requires that all pro se litigants receive notice of the consequences of failing to respond to a summary judgment motion. *Timms v. Frank*, 953 F.2d 281, 285 (7th Cir. 1992), *rehrg denied*, (Jan. 28, 1992), *cert. denied*, 504 U.S. 957, 112 S.Ct. 2307, 119 L.Ed. 2d 228 (1992). Petitioner claims she did not receive this required notice. However, as expressly acknowledged by the lower

courts, Respondent satisfied well settled law in the Seventh Circuit when it notified Petitioner of her obligations and the consequences for non-compliance under both *Local Rule 56.1* and *Fed. R. Civ. P. 56.*

The Seventh Circuit stated that Petitioner failed to follow the local rules' summary judgment procedural requirements " . . . even after Woodstock informed her by letter of her failure to comply with Rule 56.1 and she moved for and was given an extension by the court to correct this deficiency." (*Ellman v. Woodstock #200 School District*, 59 Fed. Appx. 885, 886, 2003 U.S. App. LEXIS 3934, *3 (7th Cir. Mar. 5, 2003). Decision reproduced at Petitioner's Appendix A, p. 4.) The Seventh Circuit first noted the deference that the District Court paid to Petitioner as a pro se litigant by giving her an opportunity to fix her mistakes. However, Petitioner did not fix her mistakes. The District Court additionally ruled that Petitioner should not be given additional latitude in complying with the procedural rules, in part, because, " . . . the school district *in writing* specifically informed Ellman of her obligations under LR 56.1." (*Ellman v. Woodstock #200 School District*, 2001 U.S. Dist. LEXIS 2519, *3 (N.D. Ill. Feb. 26, 2001) (emphasis in original). Decision reproduced at Petitioner's Appendix C, p. 13.)

Fully informed and with a second chance at her doorstep, Petitioner chose to turn a blind eye to the local rules. Petitioner's choice is in step with her actions that led to sanctions in the District Court for refiling issues that were previously litigated and in the Seventh Circuit for filing a frivolous appeal. Petitioner is clearly capable of following procedural rules when she deems them worth following. For an example, this Honorable Court need not look any further than the procedural steps that Petitioner

followed in her Petition for Writ of Certiorari. In sum, the asserted error that Petitioner was not given appropriate notice of the rules governing summary judgment motions is contrary to the facts of this case as found by both the United States District Court for the Northern District of Illinois and the United States Circuit Court for the Seventh Circuit.

IV. Sanctions for Attorneys' Fees and Costs Were Awarded in Conformity with a Properly Stated Rule of Law

Fed. R. Civ. P. 54(d)(2)(B) plainly states, "*Unless otherwise provided by statute or order of the court*, the motion [for attorneys' fees and related non-taxable expenses] must be filed and served no later than 14 days after entry of judgment; . . . . " (Rule reproduced at Petition for Writ of Certiorari, p. 5, emphasis added.) The Seventh Circuit previously determined that a local rule is an order of the court for the purposes of *Fed. R. Civ. P. 54(d)(2)(B). Johnson v. Lafayette Fire Fighters Ass'n Local 472, et al.*, 51 F.3d 726 (7th Cir. 1995). The Seventh Circuit also ruled that a local rule can modify the filing period contained in the federal rule and not be in conflict with the applicable federal rule under *28 U.S.C. § 2071(a)* and *Fed. R. Civ. P. 83(a). Id.*, 51 F.3d at 729-30.

In solidarity with the Seventh Circuit, the Third, Fifth, Ninth and Eleventh Circuits (all the circuit courts that have addressed this issue) also ruled that a district court's local rules are orders of the court. *Planned Parenthood of Central New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 260 (3d Cir. 2002), *collecting the following cases, Tire Kingdom, Inc. v. Morgan Tire & Auto, Inc.*, 253 F.3d 1332, 1335 (11th Cir. 2001); *Walker v.*

City of Bogalusa, 168 F.3d 237, 239 (5th Cir. 1999); *Eastwood v. Nat'l Enquirer*, 123 F.3d 1249, 1257 (9th Cir. 1997).

As an order of the court, the U.S. District Court for the Northern District of Illinois' *Local Rule 54.3(b)* otherwise provides that, "Unless the court's order includes a different schedule for such filing, the motion . . . shall be filed and served no later than 90 days after the entry of the judgment or settlement agreement on which the motion is founded." It is a far stretch, if not frivolous, to argue that *Local Rule 54.3* usurps congressional power when Congress specifically drafted *Fed R. Civ. P. 54* to allow for modifications in the timeline.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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